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EXAMINER	
AVELLINO, JOSEPH E	

ART UNIT	PAPER NUMBER
2143	

DATE MAILED: 11/20/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/018,006	PILGER ET AL.	
	Examiner	Art Unit	
	Joseph E. Avellino	2143	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *25 October 2006*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *7-11 and 13-16* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *7-11 and 13-16* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☒ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

1. Claims 7-11, and 13-16 are presented for examination; claim 7 independent.

2. In light of the Response After Final, dated October 25, 2006, the Office withdraws the finality of the previous Office Action.

Claim Rejections - 35 USC § 102

3. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 7-11, and 13-15 are rejected under 35 U.S.C. 102(e) as being anticipated by Fijolek et al. (USPN 6,223,222) (hereinafter Fijolek).

4. Referring to claim 7, Fijolek discloses a communication system utilizing a network (Figure 1), comprising:

a user computer (i.e. CPE 18) connected to the network 14 (Figure 1) including an access unit (i.e. Cable Modem 16) which determines predetermined QoS features for interaction with the network (i.e. requests a particular QoS, and performs the communication at the acquired QoS) (e.g. abstract; Figure 18; col. 29, line 55 to col. 30, line 7); and

a service provider computer (i.e. QoS Server 332) connected to the network 14 (Figure 1), to enable the QoS features of the access unit (i.e. provide a QoS identifier to

the cable modem to perform communications at the requested CoS and rate) (Figures 18 and 27; col. 29, line 55 to col. 30, line 7; col. 36, lines 44-61); and

a database, connected to the service provider computer, to determine which of the predetermined QoS features (i.e. identifiers) are currently permissible for the user computer (i.e. what identifiers are currently used for each indication of CoS, QoS and other related parameters requested by the modem (col. 29, line 55 to col. 30, line 5).

5. Referring to claim 8, Fijolek discloses the network is the Internet (i.e. data net 28) (Figure 1).

6. Referring to claim 9, Fijolek discloses the access unit is an autonomous device (i.e. a cable modem is considered an autonomous device) (Figure 1, col. 6, lines 30-35).

7. Referring to claim 10, Fijolek discloses the access unit is a plug-in device for the first computer (the Office takes the term "plug-in device" to be broadly construed as "a device which can be physically or logically connected to a computer" such as the cable modem can be "plugged into" the CPE 20 via an Ethernet cable) (Figure 1).

8. Referring to claim 11, Fijolek discloses the access unit is a processor of the first computer programmed to determine predetermined QoS features for interaction with the network (i.e. since the interface device acts on behalf of the first computer, it can be considered that the interface access device processor is a processor of the first

computer since without the interface, the first computer would be unable to access the network (col. 29, line 55 to col. 30, line 5).

9. Referring to claim 13, Fijolek discloses the QoS computer is assigned to an ISP (i.e. data over cable system 330 is part of the ISP network) (col. 29, line 55 to col. 30, line 5).

10. Referring to claim 14, Fijolek discloses the QoS features are called up dynamically in the access unit (the Office takes the term "called up" as created) (col. 5, lines 56-67).

11. Referring to claim 15, Fijolek discloses the access unit (i.e. cable modem) converts from a first protocol (i.e. Ethernet connecting the cable modem with the CPE 20) to a second protocol (i.e. the protocol used to transfer data over a cable network, commonly known as DOCSIS) (col. 6, lines 30-35).

Claim Rejections - 35 USC § 103

12. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claim 16 is rejected under 35 U.S.C. 103(a) as being unpatentable over Fijolek in view of Loukianov (USPN 6,249,526).

13. Fijolek discloses the invention substantively as described in claim 7. Fijolek inherently requires that the access unit is incapable of operation without additional components (i.e. a power cord to provide power to the modem, as well as data cables to connect various components to the modem). Fijolek does not specifically state that the cable modem is an integral component to the user computer. In analogous art, Loukianov discloses another communications system utilizing a network (Figure 1, ref. 100) which discloses a cable modem as an integral component to the user computer (i.e. "the cable modem unit 300 is in the PCI form factor such as one of the peripheral devices"; a device in the PCI form factor cannot operate without being connected to the client computer, which delivers power and timing configurations, which satisfies the definition of being an "integral" component to the client computer) (Figure 3; col. 4, lines 8-14). It would have been obvious to one of ordinary skill in the art to combine the teaching of Fijolek with Loukianov in order to help the cable modem of Fijolek perform time-critical tasks without an on-board processor and accommodate the changing specifications in the protocol without modification to the hardware as supported by Loukianov (col. 1, lines 43-48).

Response to Arguments

14. Applicant's arguments, dated October 25, 2006 have been fully considered but are not persuasive.

15. In the remarks, Applicant argues, in substance, that (1) Fijolek does not determine predetermined quality of service features for interaction with the network, rather a QoS server which determines whether a client has enough bandwidth for a connection, (2) Fijolek does not disclose one of enabling, disabling, altering, or adding QoS features to an access unit, rather merely adds a QoS identifier, and (3) Fijolek teaches away from providing an integral cable modem because Fijolek discloses that the cable modem can be integrated into the CMTS.

As to point (1), Applicant is incorrect. Applicant has not sufficiently defined in the claim what is meant by "determine predetermined quality of service features". Applicant is reminded that although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993). Fijolek discloses that the cable modem requests a particular QoS, from the QoS server at the CMTS and performs the communication at the acquired QoS. This clearly can be interpreted as "determine quality of service features", since the cable modem must determine what attributes the determined QoS requires (i.e. the configuration information received from the QoS server in the CMTS; specifically those shown in Table 10, col. 30). Furthermore the transmitted QoS parameters include transit delay, level of protection, cost for delivery of

data, error probability, etc (col. 30, lines 50-67). These QoS parameters are sent to the QoS server from the cable modem, if a QoS identifier is received, that means that those parameters are acceptable, and the CM can perform communications at that particular QoS (see col. 29, line 55 to col. 30, line 8). This clearly teaches that the cable modem of Fijolek is capable of determine predetermined quality of service features for access to the network (it receives a response by the QoS server which either accepts or rejects the QoS request). By this rationale, the rejection is maintained.

16. As to point (2), Applicant can appreciate that when the QoS identifier is returned to the cable modem, this essentially *enables* the cable modem to perform communications at that particular QoS, otherwise, when no QoS identifier is found in the response, the QoS server (i.e. the claimed service provider computer) essentially *disables* that particular communication quality of service for the CM at that particular time. By this rationale, the rejection is maintained.

17. As to point (3), without agreeing to Applicant's rationale that Fijolek teaches away from an integral cable modem, the Examiner has provided a new rejection for claim 16 which clearly shows that it would have been obvious to one of ordinary skill in the art to modify the system of Fijolek to make the cable modem integrally connected to the client computer. By this rationale, the rejection is maintained.

Conclusion

18. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

19. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

20. Applicant employs broad language, which includes the use of word, and phrases, which have broad meanings in the art. In addition, Applicant has not argued any narrower interpretation of the claim language, nor amended the claims significantly enough to construe a narrower meaning to the limitations. As the claims breadth allows multiple interpretations and meanings, which are broader than Applicant's disclosure, the Examiner is forced to interpret the claim limitations as broadly and as reasonably

possible, in determining patentability of the disclosed invention. Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See In re Van Geuns, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir.1993). Failure for Applicant to significantly narrow definition/scope of the claims and supply arguments commensurate in scope with the claims implies the Applicant intends broad interpretation be given to the claims. The Examiner has interpreted the claims with scope parallel to the Applicant in the response, and reiterates the need for the Applicant to more clearly and distinctly, define the claimed invention.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Joseph E. Avellino whose telephone number is (571) 272-3905. The examiner can normally be reached on Monday-Friday 7:00-4:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David A. Wiley can be reached on (571) 272-3923. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Joseph E. Avellino, Examiner
October 31, 2006

DAVID WILEY
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER